

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
SOUTHWEST DIVISION

Dakota, Missouri Valley & Western ) Civil No. 1:11 CV-083  
Railroad, Inc., )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
National Interstate Insurance Co., )  
 )  
Defendant.

**NOTICE OF REMOVAL**

Defendant National Interstate Insurance Company respectfully shows the Court:

I.

The above-entitled action commenced in the District Court of Burleigh County, State of North Dakota, South Central Judicial District, on September 26, 2011, and is now pending in that Court.

II.

The above-entitled action is a civil action for alleged breach of insurance contract and alleged bad faith.

III.

Petitioner is the defendant in this action.

IV.

This action is removable pursuant to Section 1441 of Title 28 of the United States Code.

V.

This action is one which the United States District Courts was given original jurisdiction by reason of diversity of citizenship of the parties pursuant to 20 U.S.C. § 1332.

VI.

The amount in controversy in this action, exclusive of interest and costs, exceeds \$75,000.

VII.

A copy of the Complaint was served upon petitioner on or about September 27, 2011, at the North Dakota Insurance Department, 600 E. Boulevard Ave., Bismarck, North Dakota.

VIII.

Thirty days have not yet expired since the action became removable to this Court.

IX.

At the time of the commencement of this action, plaintiff Dakota, Missouri Valley & Western Railroad, Inc. was and now is authorized to do business in the State of North Dakota, with its principal place of business in the State of North Dakota.

X.

At the time of the commencement of this action, defendant National Interstate Insurance Co. was and now is an insurance company with its principal place of business and incorporated in the State of Ohio.

XI.

The Southwest Division of the United States District Court for the District of North Dakota is the proper court for removal. This cause of action arose near Washburn, North Dakota.

XII.

Copies of all pleadings, process, and orders served on petitioner in this action are attached and marked Exhibit A (letter from North Dakota Insurance Department to National Interstate Insurance Co.), Exhibit B (Summons & Complaint), Exhibit C (Admission of Service), and Exhibit D (Answer of Defendant National Interstate Insurance Co.).

XIII.

Written notice of the removal has been given to the plaintiff and a copy of the Notice of Removal has been filed with the state court in which the action is pending.

WHEREFORE, petitioner National Interstate Insurance Co. requests that the above-entitled matter be removed from the District Court of Burleigh County, State of North Dakota, to the United States District Court for the District of North Dakota, Southwest Division.

This Petition is signed in accordance with the provision of Rule 11 of the Federal Rules of Civil Procedure.

Dated this 19th day of October, 2011.

PEARCE & DURICK

By: Larry L. Boschee

LARRY L. BOSCHEE, ND #04293

ZACHARY E. PELHAM, ND #05904

Attorneys for Defendant

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P.O. Box 400

Bismarck, ND 58502-0400

(701) 223-2890

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Dakota, Missouri Valley & Western ) Civil No. \_\_\_\_\_  
Railroad, Inc., )  
Plaintiff, )  
vs. )  
National Interstate Insurance Co., )  
Defendant. )

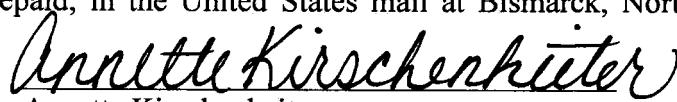
**AFFIDAVIT OF MAILING**

STATE OF NORTH DAKOTA )  
 ) ss.  
COUNTY OF BURLEIGH )

Annette Kirschenheiter, being first duly sworn, deposes and says that on the 19<sup>th</sup> day of October, 2011, she mailed a copy of the foregoing *Notice of Removal*, by placing a true and correct copy thereof in an envelope, addressed to the following:

Scott Porsborg  
Sandra L. Voller  
122 E. Broadway  
P.O. Box 460  
Bismarck, ND 58502

and depositing the same, with postage prepaid, in the United States mail at Bismarck, North Dakota.

  
Annette Kirschenheiter

Subscribed and sworn to before me this 19 day of October, 2011.

  
Cari Timmons  
Notary Public

